

shall also state whether the individual's name will be included on the per capita payment roll. If no election is made by the individual applicant, parent, or legal guardian, the individual's name will not be included on the per capita payment roll.

(2) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with §67.9(a)(2) and §67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Area Director may grant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(3) The change in the election of whether to share in the per capita payment can only be made by adult applicants, or by the legal guardian of an incompetent adult, or in the case of minors, by the parents or legal guardian of such minors.

§67.12 Exhaustion of administrative remedies.

The decision of the Area Director on appeal, which shall be final for the Department, is subject to judicial review under 5 U.S.C. 704.

§67.13 Preparation, certification and approval of the roll.

(a) The Superintendent shall prepare a minimum of three (3) copies of the roll of those persons determined to be qualified for enrollment as an Independent Seminole Indian of Florida. The roll shall contain for each person a roll number or identification number, name, address, sex, date of birth, date of death (when applicable), and the name and relationship of the ancestor on the annotated Seminole Agency Census of 1957 through whom eligibility for enrollment was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his or her knowledge and belief, the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Area Director shall approve the roll.

§67.14 Preparation of a per capita payment roll.

(a) The Superintendent shall, based on the roll approved under §67.12(c), prepare a per capita payment roll. The payment roll shall be comprised of those persons whose names appear on the approved roll and who have elected to share in the per capita payment.

(b) The per capita payment roll shall contain for each person a roll number or identification number, name, and address.

(c) The Area Director shall authorize the distribution of the judgment funds to those persons named on the per capita payment roll.

§67.15 Special instructions.

To facilitate the work of the Superintendent and Area Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part.

PART 75—REVISION OF THE MEMBERSHIP ROLL OF THE EASTERN BAND OF CHEROKEE INDIANS, NORTH CAROLINA

Sec.

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- 75.4 Basic membership roll.
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AUTHORITY: Sec. 2, 71 Stat. 374.

SOURCE: 24 FR 201, Jan. 8, 1959, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 75.1 Definitions.

As used in this part:

(a) *Band* means the Eastern Band of Cherokee Indians in North Carolina.

(b) *Reservation* means the lands of the Eastern Band of Cherokee Indians in the counties of Jackson, Swain, Graham, Cherokee and Haywood in North Carolina.

(c) *Tribal Council* means the Tribal Council of the Eastern Band of Cherokee Indians in North Carolina.

(d) *Announcement* means the announcement of the revision of the membership roll issued as required in § 75.3.

(e) *Tribal Enrollment Office* means the Tribal Enrollment Clerk working in concert with the Enrollment Committee.

(f) *Tribal Enrollment Clerk* means the individual working in the Tribal Enrollment Office.

(g) *Enrollment Committee* means the three individuals appointed by the Tribal Council in accordance with § 75.12.

[24 FR 201, Jan. 8, 1959, as amended at 25 FR 2516, Mar. 25, 1960; 38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.2 Purpose.

The regulations in this part are to govern the revision, as authorized by the Act approved August 21, 1957 (71 Stat. 374), of the membership roll of the Eastern Band of Cherokee Indians, North Carolina, prepared and approved in accordance with the Act of June 4, 1924 (43 Stat. 376), and the Act of March 4, 1931 (46 Stat. 1518).

§ 75.3 Announcement of revision of roll.

When the Tribal Council has authorized the expenditure of tribal funds to supply sufficient staff to perform the work necessary to revise the membership roll of the Band and such staff has been employed and when the application forms and other necessary documents have been devised and printed, the Principal Chief, or in his absence the Vice Chief or the Chairman of the Tribal Council shall announce that a revision of the membership roll of the Band shall commence on a specified date. The date specified shall be not

less than 15 days nor more than 30 days from the date of issuance of the announcement. A press release should be prepared announcing the date the revision of the roll shall begin, together with other pertinent information such as the membership requirements and where application forms may be obtained. The press release should be distributed to all newspapers and radio stations within the region of the Reservation with a request that it be given wide publicity. Copies of the press release should also be posted in the Agency Office and at various other public places throughout the Reservation as well as in Post Offices of the towns adjacent to the Reservation.

§ 75.4 Basic membership roll.

All persons whose names appear on the roll of the Eastern Band of Cherokee Indians of North Carolina, prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518), shall be members of the Band.

§ 75.5 Removal of deceased persons from the roll.

The name of any person who was not alive as of midnight August 21, 1957, shall be stricken from the basic membership roll by the Tribal Enrollment Office upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.6 Additions to the roll.

There shall be added to the roll of the Band the names of persons living on August 21, 1957, who meet the following qualifications:

(a) Persons born during the period, beginning on or after June 4, 1924, and ending midnight August 21, 1957, who are direct descendants of persons whose names appear on the roll prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518); provided, such persons:

(1) Who applied for membership before August 14, 1963 possess at least $\frac{1}{32}$ degree of Eastern Cherokee Indian blood, and those persons who apply for membership on or after August 14, 1963,

possess at least $\frac{1}{16}$ degree Eastern Cherokee Indian blood, except that persons who also possess Indian blood of another tribe shall not be enrolled if they are enrolled as members of the other tribe.

(2) Have themselves or have parents who have maintained and dwelt in a home at sometime during the period from June 4, 1924, through August 21, 1957, on the lands of the Eastern Band of Cherokee Indians in the counties of Swain, Jackson, Graham, Cherokee and Haywood in North Carolina, except that this specific part of this section shall not apply to those persons and members of their families who were temporarily away from the Reservation due to one or both parents being in the U.S. Armed Services or who were employed by the U.S. Government and neither shall it apply to those individuals who were in mental or penal institutions during this period of time.

(3) Have filed an application for enrollment with the Band in accordance with the procedures set forth in this part.

(b) A child born out of wedlock to a mother who is either an enrolled member of the Band, or who meets the qualifications for enrollment as a member, may be enrolled if such child otherwise meets the requirements for enrollment as set forth in this section.

(c) A child born out of wedlock to a mother who is not a member of the Band may be enrolled if the mother files with the Enrollment Committee proof established in accordance with the laws of North Carolina as to the paternity of the child and the person adjudged to be the father is either an enrolled member of the Band, or meets the requirements for enrollment as a member, and if the child otherwise meet the requirements for enrollment as set forth in this section.

[24 FR 201, Jan. 8, 1959, as amended at 25 FR 2516, Mar. 25, 1960; 28 FR 8314, Aug. 14, 1963. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.7 Applications for enrollment.

Each adult person who believes he meets the requirements for enrollment established herein may submit to the Tribal Enrollment Office an applica-

tion for enrollment as a member of the Eastern Band of Cherokee Indians.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.8 Applications for minors and incompetents.

Applications for enrollment of minors may be filed by the parent, next of kin, recognized guardian, or other person responsible for their care. Applications for enrollment of persons known to be in mental or penal institutions may be filed by the Principal Chief of the Eastern Band of Cherokee.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.9 Application form.

The form of application for enrollment will be prepared by the Tribal Enrollment Office and, in addition to whatever information the Enrollment Committee may deem necessary, shall contain the following:

(a) The name and address of the applicant. If the application is filed on behalf of a minor, the name and address of the person filing the application and his relationship to the minor.

(b) The name, relationship, tribe and roll number of the ancestor or ancestors through whom enrollment rights are claimed, and whether applicant is enrolled with another tribe.

(c) The date of death of such ancestor, if deceased.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.10 Where application forms may be obtained.

Application forms will be supplied by the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, N.C. 28719, upon request, either in person or by mail.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.11 Proof of relationship.

If the applicant's parents or other Eastern Cherokee ancestors through whom the applicant claims enrollment rights are unknown to the Tribal Enrollment Office, the Tribal Enrollment Office may request the applicant to

§ 75.12

furnish such additional information and evidence as it may deem necessary to determine the applicant's eligibility for enrollment. Failure of the applicant to furnish the information requested may be deemed sufficient cause for rejection.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.12 Enrollment Committee.

The Tribal Council shall appoint either from within or without the membership of the Council, but not from without the membership of the Band, a committee of three (3) persons to serve as the Enrollment Committee. The Enrollment Committee shall review all applications for enrollment filed in accordance with the existing regulations, and shall determine the qualifications of the applicant for enrollment with the Band. The Enrollment Committee may perform such other functions relating to the enrollment and membership in the Band as the Tribal Council may from time to time direct.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.13 Tenure of Enrollment Committee.

The members of the Enrollment Committee shall be appointed to serve a term of office of 2 years by each newly elected Tribal Council.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.14 Appeals.

Any person whose application for enrollment has been rejected by the Enrollment Committee shall have the right to appeal to the Tribal Council from the determination made by the Enrollment Committee; *Provided*, That such appeal shall be made in writing and shall be filed in the office of the Principal Chief for presentation to the Tribal Council within sixty (60) days from the date on which the Enrollment Committee issues notice to the applicant of his rejection. The applicant may submit with his appeal any additional data to support his claim to enrollment not previously furnished. The decision of the Tribal Council as to whether the applicant meets the re-

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quirements for enrollment set forth in this part shall be final. The Tribal Council shall review no applications for enrollment except in those cases where the rejected applicant appeals to the Council in writing from the determination made by the Enrollment Committee.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.15 Current membership roll.

The membership roll of the Eastern Band of Cherokee Indians shall be kept current by striking therefrom the names of persons who have relinquished their membership in the Band as provided in § 75.17 and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office, and by adding thereto the names of individuals who meet the qualifications and are accepted for membership in the Band as set forth in this part.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.16 Eligibility for enrollment of persons born after August 21, 1957.

(a) Persons possessing one-sixteenth or more degree Eastern Cherokee Indian blood and born after August 21, 1957, may be enrolled in either of the following manners:

(1) An application to have the person enrolled must be filed by or on behalf of the person by the parent or recognized guardian or person responsible for his care, which application shall be accompanied by the applicant's birth certificate or by other evidence of eligibility of the applicant for enrollment that the Tribal Enrollment Office may require.

(2) In the absence of such application within 6 months after a person's birth, the Tribal Enrollment Office shall be authorized and encouraged to obtain evidence relating to the eligibility of the person for enrollment in the Eastern Band, and present an application in his behalf to the Enrollment Committee which may proceed to enroll the person if the evidence submitted meets the criteria.

(b) A person adopted in accordance with applicable laws by either tribal

members or nonmembers, shall be considered for enrollment as a tribal member if the person otherwise meets the requirements for enrollment.

(c) A person born to an enrolled member of the Band and an enrolled member of another Tribe, and said person is enrolled in the other Tribe, may be transferred from the rolls of the other and added to the rolls of the Eastern Band if he meets the general requirements for enrollment and, in addition:

(1) A death certificate or other acceptable evidence of the death of the parent enrolled in the other Tribe is received and the surviving parent who is a member of the Eastern Band makes application for enrollment by way of transfer.

(2) Upon receipt of divorce documents in the Tribal Enrollment Office, there is evidence of custody of the minors being awarded to the parent who is a member of the Band and the parent awarded custody makes application for enrollment of the minors with the Eastern Band by way of transfer.

(d) In order for a child to be enrolled under paragraph (b) or (c) of this section, either:

(1) An application to have the child enrolled must be filed on behalf of the child by the parent or recognized guardian or person responsible for his care, which application shall be accompanied by the child's birth certificate or by other evidence as to the eligibility of the child for enrollment as the Enrollment Committee may require, which application must be filed within one year from the date of birth of such child, or

(2) In the absence of such application, the Tribal Enrollment Committee may on its own motion, proceed to enroll any eligible child upon receipt by it of such evidence as shall satisfy the Committee as to the eligibility of the child to be enrolled, within one year from date of birth of such child.

[28 FR 8315, Aug. 14, 1963, as amended at 29 FR 9326, July 8, 1964; 38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.17 Relinquishment of membership.

Any member of the Eastern Band of Cherokee Indians may relinquish his membership in the Band by filing no-

tice in writing that he no longer desires to be enrolled as a member of the Band. On receipt of such notice the name of the members shall be stricken from the roll and he shall no longer be considered as a member of the Band and shall not be entitled to share in any use or in any distribution of tribal assets which may be made in the future to the enrolled members of the Band.

§ 75.18 Adoption.

The Tribal Council of the Eastern Band of Cherokee Indians shall be empowered to enact ordinances governing the adoption of new members.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.19 Distribution of judgment funds.

The membership roll of the Eastern Band of Cherokee Indians of North Carolina will be brought up to date as of October 10, 1974, to serve as the basis for distributing certain judgment funds awarded to the Band in Indian Claims Commission dockets 282-A through L.

(a) Filing of and action on applications shall be in accordance with regulations in this part 75, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) In lieu of notice provisions contained in § 75.3, the Commissioner of Indian Affairs or his authorized representative shall provide notice of the bringing up to date of the membership roll through publication of these amended regulations in the FEDERAL REGISTER and through appropriate press releases and other public notices.

(c) Application forms may be obtained from the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, North Carolina 28719. Completed applications must be received by the Tribal Enrollment Office no later than midnight January 8, 1975.

(d) Requests for applications for enrollment in the Band received after midnight of the deadline date will not be furnished until after the funds have been distributed.

(e) In lieu of the procedures given in § 75.14, appeals from rejected applicants must be in writing and filed pursuant to part 62 of this subchapter, a copy of

which shall be furnished with each notice of rejection.

(f) The Tribal Council and the Superintendent shall attach separate statements to the roll certifying that to the best of their knowledge and belief, the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The roll shall then be submitted through the Area Director to the Commissioner for approval.

(g) To facilitate the work of the Tribal Enrollment Committee the Commissioner may issue special instructions not inconsistent with the regulations in this part 75.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 81—TRIBAL REORGANIZATION UNDER A FEDERAL STATUTE

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AUTHORITY: 25 U.S.C. 473a, 476, 477, and 503.

SOURCE: 46 FR 1670, Jan. 7, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§81.1 Definitions.

As used in this part:

(a) *Adult Indian* means any Indian as defined in paragraph (i) of this section who has attained the age of 18 years.

(b) *Amendment* means any modification, change, or total revision of a constitution or charter.

(c) *Authorizing Officer* means the Bureau of Indian Affairs official having authority to authorize the calling of a Secretarial election.

(d) *Cast ballot* means an official ballot that is cast in the proper manner at the proper time by a duly registered voter. A ballot is cast by duly placing it in the ballot box or, in the case of absentee voting, when the ballot is duly received through the mail by the election board.

(e) *Charter* means the charter of incorporation the Secretary may issue to a reorganized tribe pursuant to Federal Statute.

(f) *Commissioner* means the Commissioner of Indian Affairs or his/her authorized representative.

(g) *Constitution* or *Constitution and Bylaws* means the written organizational framework of any tribe reorganized pursuant to a Federal Statute for the exercise of governmental powers.

(h) *Federal Statute* means one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act); or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(i) *Indian* means: (1) All persons who are members of those tribes listed or eligible to be listed in the FEDERAL REGISTER pursuant to 25 CFR 83.6(b) as recognized by and receiving services from the Bureau of Indian Affairs; provided, that the tribes have not voted to exclude themselves from the Act of June 18, 1934, 43 Stat. 984, as amended; and (2) any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.

(j) *Invalid ballot* means an official cast ballot discovered at the time the votes are counted which does not comply with the requirements for voting or is not an official ballot. An invalid ballot is not to be counted for determining the number of cast ballots.